REPORT OF THE COMMITTEE ON LEGAL EDUCATION

To the President and Members of the Pennsylvania Bar Association:

The By-laws of this Association, which were adopted at its organization in 1895, and which remain unchanged, make it the duty of the Committee on Legal Education to "report from time to time such changes as they shall deem it is expedient to make in the system of legal education and of admission to the practice of law in the State."

Owing to the activity of this Association, which activity in this regard, it may be truly said, took its initiative from the admirable paper, read at the first annual meeting of the Association at Bedford Springs in 1895, by the immediate predecessor of the writer in the Chairmanship of the Committee on Legal Education, George Wharton Pepper, Esq., and owing very largely to the indefatigable efforts of Robert Snodgrass, Esq., who served as the Chairman of the Committee on Legal Education from its first appointment until he became President of the Association in 1907, and to those of Mr. Pepper, who served as the Secretary of that Committee until he succeeded Mr. Snodgrass as its Chairman, a most excellent "system of legal education," certainly so far as admission to the Bar of the Supreme Court is concerned, has been established and developed in this Commonwealth, so that there seems to be little for this Committee to suggest in this regard.

By permission of Mr. Chief Justice Fell, and through the courtesy of Charles L. McKeehan, Esq., Secretary of the State Board of Law Examiners, we give the following amendments in the "Rules Concerning Admission to the Bar of the Supreme Court of Pennsylvania," which are

now under consideration by the Court, and, perhaps with some slight change, will be included in an order to be handed down at the next meeting of the Court, on July 6th:

RULE IV. Insert in first paragraph "and shall have received an academic degree from some college or university, approved for that purpose by the Board or," so that it shall read:

"No person shall be registered as a student at law for the purpose of becoming entitled to admission to the Bar of the Supreme Court until he shall have satisfied the State Board of Law Examiners that he is of good moral character, *and shall have received an academic degree from some college or university approved for that purpose by the Board or* shall have passed a preliminary examination upon the following subjects."

In the second paragraph, change the fee from twenty to twenty-five dollars, and omit the last sentence which reads: "Said Prothonotary shall thereupon immediately certify such registration to the Secretary of the Board of Law Examiners."

RULE VII. Omit "Harrisburg," "Williamsport" and "Wilkes Barre," so that the examinations shall be held only in Philadelphia and Pittsburgh.

RULE VIII. Amend that part of the rule which reads: "The Board may, with the approval of the Court, appoint assistants to aid in securing compliance with the conditions preliminary to registration and examination, to superintend the conduct of the candidates, and to make a preliminary report upon the answers of the candidates; but the members of the Board shall be responsible to the Court for the enforcement of these rules, and the proper ascertainment of the results of the examinations, and no student shall be rejected except by a majority of the State Board

of Law Examiners. The Board shall also have power to appoint a Secretary and a Treasurer, or the same person may hold both offices, and they may pay to each assistant examiner, and to the Secretary and Treasurer, out of the fees received, and after deduction of the necessary expenses, a reasonable compensation." so that it shall read: "The Board may, with the approval of the Court, appoint *examiners to superintend the conduct of the examinations, and to report upon the answers of the candidates,* but the members of the Board shall be responsible to the Court for the enforcement of these rules and the proper ascertainment of the results of the examinations. The Board *may also, with the approval of the Court,* appoint a Secretary and a Treasurer, or the same person may hold both offices, and they may pay to each *Examiner* and to the Secretary and Treasurer out of the fees received, and after deduction of the necessary expenses, a reasonable compensation."

Add at the end of the Rule: "All applications for a suspension of the rules of Court in particular cases shall be first made to the State Board of Law Examiners."

The first amendment to Rule IV, if made, will impose upon the State Board the difficult, and, in view of the results heretofore obtained it would seem, unnecessary task of deciding from what colleges and universities academic degrees shall be accepted.

Indeed, considering the admirable results which have been secured in the past by the present Rules, it would be interesting to know why these amendments have been proposed, and what is sought to be accomplished thereby.

With regard to the subject of "admission to the practice of law in the State," the first judicial construction of the Act of May 8, 1909, P. L. 475, which relates to that subject, was in the case of *Street vs. Maynard,* reported in 19 District Reports, p. 630. This Act provides in Section 1, "that admission now had or that may hereafter

be had to practice as an attorney-at-law in the Supreme Court of this Commonwealth shall of itself, without more, operate as an admission of such attorney as an attorney-at-law in every other court of this Commonwealth, without any other or further action by such other courts or by such attorney;" in Section 2, "that disbarment or suspension of any attorney-at-law by the Supreme Court of this Commonweal shall of itself, without more, operate as a disbarment or suspension of such attorney as an attorney-at-law in every other court of this Commonwealth, without any other or further proceedings being required to be had in such other court;" and in Section 3 "that all acts or parts of acts inconsistent herewith are hereby repealed."

The case of *Street vs. Maynard* arose in Susquehanna County, and the Court (Little, *P. J.*) in an opinion filed July 5, 1910, after stating that the case of *Splane's Petition*, 123 Pa. 527, "clearly decides that the admission of attorneys to the practice of the law is judicial and not subject to legislation," held that the Act of May 8, 1909, "may be disregarded by the Courts, and is void and of no effect."

No appeal was taken, but the same Act came before the Beaver County Court for consideration, and the Court there (Holt, *P. J.*) also held the Act unconstitutional, whereupon an appeal was taken to the Supreme Court, which rendered, on May 1, 1911, the following opinion, not yet reported, in the case of *Charles Hoopes vs. Charles W. Bradshaw, Prothonotary of Beaver County* (No. 201, October Term, 1910, Western District of Pennsylvania), Mr. Justice Brown speaking for the Court (Friday, May 1, 1911):

The appellant, a member of the bar of Allegheny County courts and of this court, in good standing, presented his praecipe to the prothonotary of the court of common pleas of the court below for his appearance for the defendant in a certain proceed-

ing therein pending. With his praecipe he exhibited a certificate of his admission on October 5, 1905, as a practitioner before this court. The prothonotary having refused to accept the praecipe and to recognize the appellant as a member of the bar of Beaver County, he applied to the court below for a mandamus directing that officer to do so. He based his application for the writ upon the act of May 8, 1909, P. L. 475, which provides that admission "to practice as an attorney-at-law in the Supreme Court of this Commonwealth shall of itself, without more, operate as an admission of such attorney as an attorney-at-law in every other court of this Commonwealth without any other or further action by such other courts or by said attorney." The writ was denied because in the judgment of the court below the act of 1909 was an unconstitutional interference by the legislature with a purely judicial function.

Nothing is clearer in the constitution than the separation of the legislative and judicial branches of our State government. Neither possesses the power of the other and any power inherent in the one cannot be exercised by the other. Judicial powers and functions are to be exercised by the judiciary alone and a century ago in Commonwealth ex rel. Brackenridge vs. The Judges, 1 S. & R. 186, it was held that the admission of an attorney to practice before a Court is a judicial act. This has never been doubted or questioned since, and, if the act of 1909 is an encroachment upon the judiciary it must be a vain attempt upon [*sic*] the legislature to exercise a power which it does not possess. The learned court below being of opinion from what was said in Splane's Case, 123 Pa. 527, that the act was such an encroachment, pronounced it null and void.

What this court had before it in Splane's Case was the act of May 19, 1887, P. L. 131, which provided that any attorney-at-law admitted to practice in any court of common pleas and in the Supreme Court of this Commonwealth should be admitted to practice in any other court of the Commonwealth upon motion simply by exhibiting to the court a certificate of admission to the Supreme Court and filing a certificate of the presiding judge of the county or district from which he came, setting forth that he was of reputable professional standing and of unobjectionable character. The question of the constitutionality of the act was not raised, and the mandamus for which Splane applied was refused because he had not complied with its provisions. The question before the court, as stated in the opinion denying the

writ was, "Whether the petitioner after having twice presented himself before the duly constituted board of examiners and having been twice rejected by them as not properly qualified to practice law, can, by procuring his admission in another county, aided by the act of assembly compel his admission in the court where he has been rejected for incompetency." Upon two occasions Splane had been before the board of examiners of the county and in each instance had been rejected as not being properly qualified to practice as an attorney. Subsequently he was admitted to practice in the court of common pleas of Cambria County, but it did not appear that he had ever resided or practiced in that county or that he was even a citizen of the State. It was further discovered that the order admitting him to practice in this court had been improvidently made. The reason for denying him the writ is thus given in the opinion of the court: "He has not complied with it (act of 1887), for the reason that it requires a certificate of the 'presiding judge of the county from whence he came setting forth that he is of reputable professional standing,' etc. This plainly means the certificate of the judge of the county where he has lived and practiced law, who is presumed to know his qualifications in that regard and who can truly and intelligently certify to his good character. A lawyer may chance to be a member of the bar of half the counties in the State; he may be admitted in a county other than the one in which he resides for the mere purpose of trying a single case. It is the merest evasion of the act to present the certificate of the judge of a district where the petitioner has not lived and practiced and an admission to the bar obtained by such means might well be vacated by the judge who should inadvertently grant it, as a fraud upon the court." After refusing the writ, for the reason stated, Chief Justice Paxson, in digressing, said in characteristically vigorous language, that the act of 1887 was an encroachment upon the judiciary department of the government, but as that question had not been raised and counsel had not been heard upon it, what was said of the unconstitutionality of the act is to be recorded as *obiter dictum,* and we now pass upon the constitutionality of the act of 1909 as a new one.

Is the act of 1909 an attempt by the legislature to usurp judicial power, or does it in any manner interfere with the exercise of judicial functions? In its first words it recognizes the admission of an attorney to practice in the highest court of the commonwealth as a judicial act, and does not attempt to interfere

with that court's power in the performance of that act. The question then resolves itself into this, may the legislature say what effect is to be given to an order or decree of this court in the matter of admitting attorneys to practice before it?

By section 3, article V of the constitution, the jurisdiction of this court extends over the entire commonwealth, and, by appeal or certiorari, the proceedings of every district court of record, as well as those of the superior court, can be here reviewed. By the act of May 22, 1722, its powers are those possessed by "the court of King's Bench"—the supreme court of common law in England—"Common Pleas and exchequer, at Westminster, or any of them." It was not, therefore, an unwarranted assumption on the part of the legislature that qualifications which fit an attorney-at-law to practice before the supreme court of the state ought to fit him to do so in every other court within it; but what may have induced the legislature to act is not important. The sole question is, did it have the power to act as it did? Having first distinctly recognized the performance of the judicial act by this court what follows is but a legislative enactment as to the force and effect to be given to it by the lower courts. For nearly seventy years similar legislation has been recognized, without a suggestion from anyone of its being an encroachment upon the powers and functions of the judiciary. The adoption of rules of court regulating practice therein is certainly as much a judicial function, with which the legislature may not interfere, as is the admission of attorneys, and yet, from the time of the passage of the act of June 16, 1836, requiring all courts of common pleas in the commonwealth, sitting as courts of equity, to be bound by the rules of practice as adopted by this court, no one has ever heard that such legislation was an encroachment upon the judiciary. And it was not, for it merely declared what effect shall be given to the rules and orders of this court, which it had the inherent power to make independently of the legislative branch of the government. This is practically the situation before us. All that the act of 1909 does is to declare what effect is to be given to the purely judicial act of this court in directing the admission of an attorney-at-law to practice before it. The act neither encroaches upon nor interferes with the power exercisable by the judiciary alone, but declares that when such power has been exercised by the highest judiciary of the state, in passing upon the qualifications of an applicant to practice as an attorney before it, its act in admitting him to its bar is to be duly recog-

nized by all the other courts over whose proceedings it has constant supervision. But while this is so, there are certain functions of the lower courts with which the act of 1909 does not interfere. The honest disposition and good moral character possessed by one at the time of his admission to the bar of this court may be subsequently lost, and, if so, the certificate of his admission here will not be a voucher for his integrity before any court to which he may apply for admission under the act of 1909. The loss of his integrity may not have been inquired into here, but if lost, he has no more right under the act of 1909 to seek membership in a county bar than he has to ask that his name shall continue upon the roll of practicing attorneys before this court; and any court may, therefore, refuse to admit to its bar a member of a bar of this court upon being duly informed that he no longer possesses "an honest disposition," declared by the act of April 14, 1834, to be one of the two requisites for admission to the bar of every court of record. Another function of the court below, not interfered with by the act and which it may be well to notice, is its power to adopt rules relating to the service of notices or papers upon non-resident practitioners. When the act of 1909 is invoked by one who does not intend to reside or establish an office in the county to whose courts he would be admitted he is not to expect practitioners residing in the county, or having established offices within it, to be subjected to annoyance and inconvenience in the service of rules or notices upon him, and the adoption of a rule as to this continues to be within the power of the court. For the reasons stated we cannot regard the act of 1909 as an unconstitutional interference with the exercise of a judicial function. The judgment is, therefore, reversed and the record remitted with directions that the mandamus issue as prayed for.

In this connection, attention is called to Sections 68 and 69 of the Act of April 14, 1834, P. L. 354:

"Section 68. The judges of the several courts of record of this Commonwealth shall respectively have power to admit a competent number of persons of an honest disposition, and learned in the law, to practice as attorneys in their respective courts.

"Section 69. Before any attorney, admitted as aforesaid, shall make any plea at the bar, except in his own case, he shall take an oath or affirmation, as follows, viz.:

"You do swear (or affirm) that you will support the constitution of the United States and the constitution of this Commonwealth, and that you will behave yourself in the office of attorney within this Court, according to the best of your learning and ability, and with all good fidelity, as well to the court as to the client, that you will use no falsehood, nor delay any person's cause for lucre or malice."

It will be observed that when one is admitted to the Supreme Court, his oath binds him only as to his behavior within "this Court," *i. e.* the Supreme Court.

It is to be regretted that, while efforts have been made by members of the profession, with the assistance of the Judges of the lower Courts, to put up barriers that will keep out those not worthy to be admitted, the Supreme Court of the State should seem, instead of helping this very laudable undertaking, to be assisting in pulling down such bars.

It will be thought by most members of the Bar, that the judgment of Mr. Chief Justice Paxson was right, when, referring to the question, whether it was desirable that the power to admit to the Bar be taken from the inferior Courts and lodged in the Courts of last resort, he said, "I consider it extremely desirable that the subject be left in the control of the inferior Courts, by which I mean Courts of record who are most familiar with the needs of their communities and of the personal fitness of applicants." *Reports of Am. Bar Assn.*, Vol. XIV, p. 307; *First Annual Report, Pa. Bar Assn.*, p. 122.

It would seem to be manifest that it is impossible for the Justices of the Supreme Court to be familiar with "the personal fitness of applicants." Under the present rules and under the decision given above, a great added responsibility

is cast upon the State Board of Law Examiners, and there will be much interest to see what course they will pursue.

It may be noted here that, at the recent session of the Legislature, the Snyder bill passed in the Senate but failed to pass in the House. This bill provided in the first Section, that "from and after the passage of this act, no person shall be eligible to the office of District Attorney of any county within this Commonwealth who has not been admitted and qualified to practice in the Supreme and Superior Courts of this Commonwealth, provided, that this act shall not apply to Counties having a population of one hundred and twenty-five thousand or less." By the second Section, "acts and parts of acts inconsistent" were repealed.

In connection with the Committee's report last year (pages 67-69, Vol. XVI), it may be said that the seeming omission of eleven Counties from the schedule is to be explained (the explanation may have already suggested itself), by the fact that where a judicial district is composed of two or more Counties, only the first named County in the district is entered in the schedule.

The recommendation of the Chairman and the Secretary of this Committee, to whom, with the Chairman and the Secretary of the Committee on Legal Biography, was referred by the Executive Committee of our Association at its mid-winter meeting, a communication from the Librarian of the Law Association of Philadelphia, asking the co-operation of this Association in keeping up to date the Rules of Court of the various Counties in Pennsylvania in the law library in the City Hall, will be found in the report of the Committee on Legal ~~Education~~ Biography.

Respectfully submitted,

JAMES M. LAMBERTON,
Chairman.

WILLIAM H. KELLER,
Secretary.